



John M. Kerr, Esquire  
Heather S. Clouser, Paralegal

September 3, 2009

VIA ECF

The Honorable Christopher C. Conner  
United States District Court Judge  
Federal Building & U.S. Courthouse  
228 Walnut Street  
Harrisburg, PA 17108

Re: DiBrito v. Harrisburg Area Community College  
No. 1:08-CV-2308

Dear Judge Conner:

I am writing in order to clarify comments and instructions you made during the Case Management Conference with counsel on March 24, 2009 regarding the above-captioned matter. You may recall that counsel who participated were myself for the Plaintiff, Lynette DiBrito and David Freedman on behalf of Harrisburg Area Community College.

It is my clear recollection that before the conclusion of our conference, even though this was not a mandatory mediation case, you asked that mediation be attempted in this case. In fact, you gave me the responsibility as Plaintiff's counsel to see that this was done before the conclusion of fact discovery. The reason I remember this so clearly is that in another case before you, Zimmerman v. Behle, et. al., you made that same request. Defense counsel in that case refused to do so, claiming that "they could not remember this comment." Since there was more than one defense counsel in that case, I acquiesced. However, when you repeated your request this time, I took note.

I have attempted on three occasions to arrange for this mediation. On the first occasion, David Freedman stated that he would have to check the Case Management Order for a reference to mediation. Of course, the point to telling me to try to arrange for mediation was that it was not in the Order. In a letter received two days ago, Mr. Freedman is now taking the position that since Plaintiff is not moving off its settlement demand, mediation would be pointless. This is exactly the reason it should be ordered. In my judgment, a professional mediator could settle this case and save the Court the necessity of utilizing valuable resources for summary judgment or trial.

Fact discovery in this case ends October 1, 2009. I have suggested the final week of September as an appropriate time to mediate. I even proposed and sent a biographical sketch to defense counsel of a potential mediator certified by this Court.

Honorable Christopher C. Conner  
September 3, 2009  
Page 2

I respectfully ask you to clarify your feelings regarding mediation of this case in light of your directive to me on March 24, 2009. Thank you for your attention to this matter.

Respectfully yours,



John M. Kerr

cc: Jennifer Craighead, Esq. (via ECF)  
David Freedman, Esq. (via ECF)